

Page 1

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK
3

4 - - - - - x
5 In the Matter of: x Chapter 11
6 LEHMAN BROTHERS HOLDINGS INC., x Case No. 08-13555(SCC)
7 Debtor. x
8 - - - - - x
9 In the Matter of: x
10 LEHMAN BROTHERS INC., x Adv. Case No.
11 x 08-01420(SCC)
12 Debtor. x
13 - - - - - x

14 U.S. Bankruptcy Court

15 One Bowling Green

16 New York, New York

17 September 9, 2014

18 10:08 AM

19 B E F O R E :

20 HON. SHELLY C. CHAPMAN

21 U.S. BANKRUPTCY JUDGE

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25

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1 HEARING re Adversary proceeding: 08-01420-scc Lehman
2 Brothers Inc. Doc# 9529 Motion for Omnibus Objection to
3 Claim(s)/Trustees Two Hundred Fifty-Fifth Omnibus Objection
4 to General Creditor Claims (No Liability Claims)

5

6 HEARING re Doc# 45296 Motion to Approve Compromise: Motion
7 Pursuant to Rule 9010 of the Federal Rules of Bankruptcy
8 Procedure and Section 105(a) of the Bankruptcy Code for
9 Approval of Settlement Agreement Between Lehman Brothers
10 Special Financing Inc. and the Bank of New York Mellon Trust
11 Company, National Association, as Trustee, Relating to MKP
12 Vela CBO Credit Default Swap Agreement

13

14 HEARING re Doc# 45447 Motion for Omnibus Objection to
15 Claim(s): The Plan Administrators Four Hundred Seventy-
16 Eighth Omnibus Objection to Claims (No Liability Claims)

17

18 HEARING re Doc# 45448 Motion for Omnibus Objection to
19 Claim(s)/ Four Hundred Seventy-Ninth Omnibus Objection to
20 Claims (No Liability Claims)

21

22 HEARING re Doc# 46073 Motion for Authorization for Lehman
23 Brothers Special Financing Inc. and Lehman Brothers
24 Commercial Corporation to Invest Disputed Claims Reserves
25 for Claim Numbers 66455 and 66476 Pursuant to Section 8.4 of

Page 3

1 the Modified Third Amended Joint Chapter 11 Plan of Lehman
2 Brothers Holdings Inc. and its Affiliated Debtors filed by
3 Jacqueline Marcus on behalf of Lehman Brothers Holdings Inc.

4

5 HEARING re Doc# 11306 Debtors' Forty-First Omnibus Objection
6 to Claims (Late-Filed Claims) filed by Shai Waisman on
7 behalf of Lehman Brothers Holdings Inc.

8

9 HEARING re Doc# 15363 Debtors' One Hundred Seventeenth
10 Omnibus Objection to Claims (No Liability Non-Debtor
11 Employee Claims) filed by Shai Waisman on behalf of Lehman
12 Brothers Holdings Inc.

13

14 HEARING re Doc# 19393 Debtors' One Hundred Seventy-Seventh
15 Omnibus Objection to Claims (No Liability Non-Debtor
16 Employee Claims) filed by Robert J. Lemons on behalf of
17 Lehman Brothers Holdings Inc.

18

19 HEARING re Doc# 31989 Three Hundred Sixty-Sixth Omnibus
20 Objection to Claims (employment-Related Claims)

21

22 HEARING re Doc# 39348 Objection to Proof of Claim No. 22605
23 Filed by Sanford A. and Tina A. Mohr filed by Michael A.
24 Rollin on behalf of Lehman Brothers Holdings Inc.

25

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1 HEARING re Doc# 40292 Objection to Proof of Claim No. 33325
2 Filed by Arthur A. Boor and Joan Boor filed by Michael A.
3 Rollins on behalf Lehman Brothers Holdings Inc.

4

5 HEARING re Doc# 45446 Plan Administrator's Four Hundred
6 Seventy-Seventh Omnibus Objection to Claims (No Liability
7 Claims) filed by Garrett A. Fail on behalf of Lehman
8 Brothers Holdings Inc.

9

10 HEARING re Doc# 45481 The Plan Administrator's Four Hundred
11 Eightieth Omnibus Objection to Claims (No Liability Claims)
12 filed by Garrett A. Fail on behalf of Lehman Brothers
13 Holdings Inc.

14

15 HEARING re Adversary proceeding: 08-01420-scc Lehman
16 Brothers Inc. Doc# 6130 Trustee's Sixty-First Omnibus
17 Objection to General Creditor Claims (No Liability Claims)
18 filed by Christopher K. Kiplok on behalf of James W.
19 Giddens, as Trustee for the SIPA Liquidation of Lehman
20 Brothers Inc.

21

22 HEARING re: Adversary proceeding: 08-01420-scc Lehman
23 Brothers Inc. Doc# 7185 Trustee's One Hundred Thirty-Fifth
24 Omnibus Objection to General Creditor Claims (No Liability
25 Claims) filed by Christopher K. Kiplok on behalf of James W.

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1 Giddens, as Trustee for the SIPA Liquidation of Lehman
2 Brothers Inc.

3

4 HEARING re Adversary proceeding: 08-01420-scc Lehman
5 Brothers Inc. Doc# 8467 Trustee's Two Hundred Seventeenth
6 Omnibus Objection to General Creditor Claims (No Liability
7 Claims) filed by Christopher K. Kiplok on behalf of James W.
8 Giddens, as Trustee for the SIPA Liquidation of Lehman
9 Brothers Inc.

10

11 HEARING re Adversary proceeding: 08-01420-scc Lehman
12 Brothers Inc. Doc# 9777 Response to Motion Response to
13 Trustees Two Hundred Forty-Seventh Omnibus Objection to
14 General Creditor Claims (Employee Claims) Solely as to a
15 Certain Claim (related document(s)9394)

16

17 HEARING re Adversary proceeding: 08-01420-scc Lehman
18 Brothers Inc. Doc# 9799 Statement/Trustees Omnibus Reply to
19 Certain Responses to the Trustees Sixty-First, One Hundred
20 Thirty-Fifth, and Two Hundred Seventeenth Omnibus Objections
21 to General Creditor Claims (No Liability Claims)

22

23 HEARING RE Adversary proceeding: 08-01420-scc Lehman
24 Brothers Inc. Doc# 9834 Notice of Hearing/Notice of Agenda
25 of Matters Scheduled for the Seventh-Seventh Omnibus and

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1 Claims Hearing on September 9, 2014 at 10:00 a.m.

2

3 HEARING re Doc# 46232 Response to Motion

4

5 HEARING re Doc# 46251 Notice of Agenda of Matters Scheduled
6 for Seventy-Seventh Omnibus and Claims Hearing on September
7 9, 2014 at 10:00 a.m.

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25 Transcribed by: Dawn South

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1 A P P E A R A N C E S :

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17 BY: MARTIZA D. BRASWELL, ESQ.

18 MICHAL A. ROLLIN, ESQ.

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14 BY: MEAGHAN C. GRAGG, ESQ.

15 STUART N. MITCHELL, ESQ.

16

17 ALSO PRESENT:

18 JANICE BOBB

19 NIRAJ SHAH

20

21

22

23

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25

1 P R O C E E D I N G S

2 THE COURT: How is everyone today? Hello,
3 Ms. Marcus.

4 MS. MARCUS: Hi. Good morning, Your Honor,
5 Jacqueline Marcus, Weil, Gotshal & Manges LLP on behalf of
6 Lehman Brothers Holdings Inc. and its affiliates.

7 We're here, Your Honor, this morning for the
8 seventy-seventh omnibus and claims hearing, and this morning
9 my colleagues will be handling the matters on the calendar.

10 THE COURT: Okay.

11 MS. MARCUS: First Candace Arthur and then Sunny
12 Singh.

13 THE COURT: Very good. Thank you. Good morning.

14 MS. ARTHUR: Good morning, Your Honor. For the
15 record Candace Arthur of Weil, Gotshal & Manges on behalf of
16 Lehman Brothers Holdings Inc., as plan administrator.

17 Your Honor, we are going forward first with the
18 uncontested motion of the plan administrator pursuant to
19 Bankruptcy Rule 9019 and Section 105(a) of the Bankruptcy
20 Code seeking approval of a settlement agreement between
21 Lehman Brothers Special Financing Inc. and the Bank of New
22 York Mellon Trust, in its capacity as trustee, with respect
23 to the MKP Vela CBO credit default swap agreement.

24 Your Honor, we filed a motion on July 18th and
25 provided you with a confidential copy of the agreement on

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1 July 30th. Additionally, the trustee served notice to the
2 noteholders.

3 Your Honor, as you are familiar with these types
4 of settlement agreements, it resolves the SPV flip clause
5 disputes, specifically with respect to the MKP Vela swap
6 agreement.

7 The salient terms of the settlement agreement are
8 that the trustee will liquidate the collateral that it
9 currently holds in the amount of approximately \$144 million
10 and make subsequent payments. First the trustee will be
11 paid all qualified amounts under the indenture will be paid,
12 an escrow account will be created, and \$775,000 will be
13 placed into it in order to cover any expenses and fees that
14 may become due and owing. Finally, LBSF will receive all
15 remaining cash.

16 At the conclusion of this, Your Honor, LBSF will
17 dismiss the trustee, the issuer, and the co-issuer from any
18 applicable adversary proceedings.

19 Additionally, Your Honor, after we filed the
20 motion, and as we noted in the correspondence that we sent
21 to your chambers yesterday, as well as in the Colara (ph)
22 declaration -- and I'd like to note for Your Honor that the
23 declarant is in the court today -- we subsequently amended
24 the settlement agreement.

25 Specifically the collateral manager for MKP Vela,

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1 MKP Capital Management LLC requested an amendment in order
2 to insure that there was a source of payment for its fees
3 and expenses under the collateral management agreement.
4 Accordingly, LBSF, the trustee, and the collateral manager
5 agreed to amend the settlement agreement in order to provide
6 for \$525,000 to be placed into the escrow account in order
7 to cover any fees and expenses that may become due and owing
8 under the collateral management agreement.

9 Additionally, LBSF and the collateral manager
10 entered into a letter agreement wherein LBSF agreed to
11 direct the trustee to make a payment to the collateral
12 manager in the amount of \$540,000 in order to cover the
13 existing fees and expenses that were incurred as of
14 August 1st, 2014.

15 Your Honor, I do apologize that we were unable to
16 provide you with a copy of the settlement agreement as
17 amended and the letter agreement at an earlier date;
18 however, we weren't able to finalize the agreement until --

19 THE COURT: That's okay, I have it.

20 MS. ARTHUR: -- late Friday afternoon, so my
21 apologies.

22 THE COURT: I have it. No problem.

23 MS. ARTHUR: Nevertheless, the motion is
24 uncontested, there were no objections, and as we note in the
25 motion through a series of purchases, LBSF was able to

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1 acquire more than two-thirds of the Class A notes, and
2 they're the only class that would in fact have any possible
3 economic interest in the collateral the trustee holds.

4 The plan administrator believes that the
5 settlement is fair and reasonable and in the best interest
6 of LBSF and its estates. To the extent that the Court has
7 any questions I'd be happy to answer, otherwise --

8 THE COURT: All right. Thank you.

9 MS. ARTHUR: -- the plan administrator does
10 respectfully request that you grant the motion.

11 THE COURT: All right. Let me ask if anyone
12 wishes to be heard with respect to the proposed settlement
13 relating to the MKP Vela CBO credit default swap agreement?

14 MS. ARTHUR: The order actually has been revised,
15 Your Honor, and it was circulated and approved by counsel
16 for the trustee as well as the collateral manager in
17 advance.

18 THE COURT: Okay. Does the revision reflect to
19 the recent amendment to the settlement agreement?

20 MS. ARTHUR: Yes, it does, Your Honor.

21 THE COURT: Okay.

22 MS. ARTHUR: I'd be happy to hand it up at the end
23 of the hearing.

24 THE COURT: All right. Well, I'll be happy to
25 review it and the motion will be granted.

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1 MS. ARTHUR: Thank you very much.

2 THE COURT: Thank you.

3 MS. ARTHUR: Your Honor, I'll turn the podium over
4 now to my colleague, Sunny Singh.

5 THE COURT: All right. Good morning.

6 MR. SINGH: Good morning, Your Honor. Sunny
7 Singh, Weil, Gotshal & Manges on behalf of the plan
8 administrator.

9 Your Honor, the next item on the agenda for this
10 morning is the plan administrator's motion for authorization
11 for Lehman Brothers Special Financing Inc. and Lehman
12 Brothers Commercial Corporation to invest the disputed
13 claims reserves for claim numbers 66455 and 66476 pursuant
14 to Section 8.4 of the plan.

15 Your Honor, the motion was filed on August 22nd
16 with an objection deadline of September 2nd in accordance
17 with the case management order, and no responses have been
18 received by the debtors and -- or filed on the docket, so
19 we're proceeding today on an uncontested basis.

20 THE COURT: Okay.

21 MR. SINGH: Your Honor, also on September 4th the
22 plan administrator filed a declaration of Mr. Bill Olshan
23 (ph) in support of the motion, and that declaration attached
24 forms of the LBSF note and the LBCC note as well as a letter
25 agreement with J.P. Morgan that are referred to in the

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1 motion. And, Your Honor, Mr. Olshan is here in court today
2 to the extent you have any questions for him.

3 Your Honor, as explained in the motion and
4 Mr. Olshan's declaration, the purpose of the motion is
5 really to accelerate distributions to LBHI's creditors,
6 including creditors of LBSF and LBCC that have corresponding
7 guarantee claims, and it's by investing the duplicative cash
8 reserves that are being maintained on account of these
9 claims by LBSF and LBCC that were filed by J.P. Morgan.

10 And just to be clear, Your Honor, J.P. Morgan has
11 asserted a number of other claims against LBHI and its
12 affiliates and has applied collateral towards those claims,
13 and none of those claims are the subject of the motion or
14 directly related thereto. We're just talking at these two
15 claims.

16 And the claims are one against LBSF for
17 approximately \$1.7 billion and another against LBCC for
18 approximately \$125 million, and the claims relate to
19 prepetition derivatives contracts between the parties that
20 were allegedly guaranteed by LBHI.

21 Your Honor, just to describe the circumstances a
22 little bit for you, after the commencement of the cases J.P.
23 Morgan applied LBHI's collateral towards these claims,
24 including collateral that was provisionally applied pursuant
25 to the collateral disposition agreement that was approved by

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1 Judge Peck in March of 2010, and as a result LBHI became
2 subrogated to the claims. But as Your Honor is aware LBHI's
3 alleged guarantee and the application of collateral by J.P.
4 Morgan are subject to litigation between the parties.

5 In addition the LBSF claim and the LBCC claim are
6 subject to litigation between the parties with respect to
7 the validity and amount of those claims.

8 And so, Your Honor, under Section 8.4 of the plan
9 these claims are treated as disputed claims, meaning that
10 every time there's a plan distribution and LBSF and LBCC
11 make distributions to their creditors they calculate a
12 reserve and reserve a cash amount on account of these
13 claims. And so if the disputed claim later becomes allowed
14 that reserve can be used to pay the catch up distributions.
15 And if the claim is later disallowed then any amounts
16 attributable to the disallowed portion of the claim become
17 available for distribution to creditors generally.

18 And so to date, Your Honor, LBSF has reserved
19 approximately 4450 million for the J.P. Morgan claim against
20 its estate, and LBCC has reserved approximately \$121
21 million, and these amounts are excluding any amounts that
22 could potentially be attributable to a plan adjustment under
23 the plan, which are not being invested, and the amounts will
24 continue to grow with each distribution so long as their
25 claims remain disputed.

1 And so, Your Honor, the reserves are really
2 duplicative of the cash that J.P. Morgan has already applied
3 towards its claims, and because -- and I say that because
4 either LBHI, to the extent it remains subrogated at the time
5 the claims are allowed, will receive these amounts as
6 distributions, or if the plan administrator is successful in
7 challenging either the amount of the claims or the
8 collateral litigation then any amounts that would be
9 returned from J.P. Morgan could then be used to fill the
10 hole for the distributions.

11 And so in light of this duplication, Your Honor,
12 the plan administrator has come up with an arrangement to
13 free up the reserves now as opposed to having to wait for
14 the J.P. Morgan litigation to be concluded while protecting
15 the interest of stakeholders. And Section 8.4 of the plan
16 authorizes the plan administrator to invest disputed claims
17 reserves subject to Your Honor's approval, and the motion
18 seeks authority to do exactly that.

19 Specifically LBSF and LBCC will use -- will invest
20 these reserves with LBHI in a secured note, LBHI will then
21 be able to use the proceeds, make distributions to its
22 creditors in accordance with the plan, and in exchange LBSF
23 and LBCC will earn an enhanced rate of interest, and also
24 the repayment of the notes will be secured by two things.
25 One, it'll be secured by any repayment by J.P. Morgan in

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1 connection with the litigations, and two, to the extent that
2 LBHI remains subrogated to the claims, it'll be secured by
3 the distributions that would otherwise have to be made.

4 And I should note, Your Honor, that although I'm
5 referring to the notes generally as we stated in the motion
6 these are going to be two separate notes. One between SF
7 and LBHI and another between LBCC. So there's no overlap
8 except that with respect to their secured liens against the
9 J.P. Morgan collateral LBSF and LBCC have a first priority
10 pari passu basis on that lien.

11 And, Your Honor, the maturity date for the notes
12 is the final resolution of the LBSF claim and the LBCC
13 claim, whenever that may be, and at that time, and it's
14 really consistent with the plan, because at that time the
15 plan administrator would otherwise know what distributions
16 to make, because it'll know what's been allowed and what's
17 been disallowed. And so in order to not prejudice any
18 stakeholders the repayment is tied exactly to that date.
19 And the repayment of the loan will be satisfied from one of
20 the following -- one or a combination of the following
21 sources.

22 So for any portion of the claim that's allowed, to
23 the extent that LBHI is still subrogated and would have been
24 entitled to those distributions, then we'll just offset the
25 amount of a note repayment that's being due there. And to

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1 the extent that the collateral litigation is resolved first
2 and J.P. Morgan is entitled to those unsecured claims as a
3 result of that litigation, then the plan administrator has
4 agreed with J.P. Morgan that J.P. Morgan can simply just
5 deduct or what we've called as a -- in the letter agreement
6 a -- sort of a -- I forget the term that we used -- but a
7 deduction that it can apply later to pay back in that amount
8 to the estate, and that'll be treated as a distribution that
9 would have been otherwise made to J.M. Morgan and a
10 repayment of the notes. And then for any portion of the
11 notes that are attributable to any disallowed portion of the
12 claim, which as I mentioned earlier, Your Honor, under the
13 plan would have to be paid out to other creditors of LBSF
14 and LBCC, J.P. Morgan has agreed that upon the resolution of
15 the claims it will pay back the amounts under the notes that
16 are allocable to the disallowed portion, including interest
17 thereon, so that LBHI will make that payment over to SF or
18 CC and LBCC will then be able to use those funds to make
19 distributions to its creditors.

20 And, Your Honor, J.P. Morgan's agreement in
21 connection with the motion is reflected in the letter
22 agreement that was attached to Mr. Olshan's declaration, and
23 except as reflected in the letter agreement of course the
24 plan administrator's and J.M. Morgan's rights with respect
25 to the litigation and the CDA are not affected by the

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1 motion, they're fully preserved.

2 Your Honor, the plan administrator submits that
3 this is another prudent exercise of its business judgment of
4 the management of the plan administrator and its board of
5 directors in order to accelerate distributions and not cause
6 harm to any stakeholders.

7 Your Honor, as we stated in the motion and
8 Mr. Olshan's declaration, if the motion is approved and the
9 investments are made the plan administrator will be able to
10 distribute in incremental \$560 million in the upcoming sixth
11 plan distribution on October 2nd, plus additional amounts
12 that would otherwise be reserved in connection with future
13 distributions.

14 In all this, Your Honor, in light of the
15 agreements with J.P. Morgan with the surety that LBHI will
16 have the funds repay the notes, if and when it's needed.

17 Your Honor, there are no objections to the motion
18 as I stated, and J.P. Morgan, who's the other only party
19 other than LBHI that could have an interest in these claim
20 reserves, has consented to the relief being requested.

21 And with that, Your Honor, unless you have any
22 questions for me we request that the motion be approved.

23 THE COURT: All right. Does anyone else wish to
24 be heard with respect to this motion? Sir? Come up to a
25 microphone, please.

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1 UNIDENTIFIED SPEAKER: Sure. I'll be very brief.

2 THE COURT: Okay.

3 UNIDENTIFIED SPEAKER: Ian (indiscernible) on
4 behalf of J.P. Morgan. We obviously support the motion --

5 THE COURT: Okay.

6 UNIDENTIFIED SPEAKER: -- as was filed and
7 Mr. Singh's articulation of the agreement that was reached.

8 THE COURT: Okay. All right. Thank you so much.

9 UNIDENTIFIED SPEAKER: Thanks very much. I again
10 apologize.

11 THE COURT: No problem.

12 All right. This is an ingenuous motion, very well
13 explained. I found it complicated, I have ultimately
14 figured it out, and your explanation here today was also
15 very helpful. The motion will be approved.

16 MR. SINGH: Thank you very much, Your Honor.

17 THE COURT: Thank you.

18 MR. SINGH: Your Honor, the next items on the
19 agenda, if I could just have a moment --

20 THE COURT: Sure.

21 MR. SINGH: -- to --

22 (Pause)

23 THE COURT: All right.

24 MR. SINGH: Your Honor, the next two items on the
25 agenda, which is the forty-first omnibus objection to claims

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1 and the one hundred seventeenth omnibus objection to claims
2 I think can be taken together if it's okay with Your Honor.

3 THE COURT: That's fine.

4 MR. SINGH: Because the basis for the plan
5 administrator's objection are really the same.

6 THE COURT: The same.

7 MR. SINGH: And I'm not sure if any of the -- I
8 know that one of the individuals here in court today --

9 THE COURT: All right. Well, let's find out.

10 Where -- with respect to the forty-first omnibus objection
11 is Ms. Lori Chan (ph) here or anyone representing her?

12 All right. With respect to the one hundred and
13 seventeenth omnibus objection, Ms. Janice Bobb or anyone
14 representing her? Please come up, ma'am.

15 Mr. Eric Scott or anyone representing Mr. Scott?
16 All right, let the record reflect no response with respect
17 to Mr. Scott.

18 Mr. or Ms. Niraj Shah? Please come up, sir.

19 Mr. Darrell Twitchel (ph) or anyone representing
20 Mr. Twitchel? All right, let the record reflect no
21 response. And --

22 MR. SINGH: That's it, Your Honor, Mr. Wardwell
23 (ph) has been adjourned.

24 THE COURT: -- that's it, Mr. Wardwell has been
25 adjourned.

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1 MR. SINGH: That's right.

2 THE COURT: Mr. Wardell (ph) has been adjourned.

3 MR. SINGH: Oh, I'm sorry, Mr. Wardell.

4 THE COURT: Wardell.

5 MR. SINGH: Excuse me.

6 THE COURT: Right.

7 MR. SINGH: And just so Your Honor is aware we had
8 filed a similar objection with respect to Ms. Rebecca Kramer
9 (ph) --

10 THE COURT: Yes.

11 MR. SINGH: -- which is number 5, and that's been
12 resolved so been removed from the agenda.

13 THE COURT: Withdrawn. Okay.

14 MR. SINGH: Yes, exactly. The claims have been
15 withdrawn and as has the objection to that claim.

16 THE COURT: All right. So we have here with us
17 today Ms. Bobb and Mr. Shah. Okay.

18 MR. SINGH: And --

19 THE COURT: All right, go ahead.

20 MR. SINGH: -- Your Honor, just to -- you know,
21 the reason, Your Honor, that these claims are being brought
22 before you today is because the plan administrator has
23 learned that the individuals filled and received allowed
24 claims against the estate of Lehman Brothers Inc.

25 THE COURT: Right.

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1 MR. SINGH: And so that's consistent with the plan
2 administrator's objection that LBHI does not have liability
3 for these claims.

4 And, Your Honor, we've been successful in our
5 discussions with other individuals that have had their
6 claims against -- allowed against LBI, unfortunately we've
7 either been unable to connect with or reach a resolution
8 with the five claimants that are going forward today.

9 And, Your Honor, just very briefly I'll summarize
10 the plan administrator's position and let the --

11 THE COURT: Folks, why don't you have a seat at
12 the table here, all right?

13 MR. SINGH: Just very briefly, Your Honor, I'll
14 just summarize the plan administrator's position and turn
15 the podium over to the claimants.

16 Your Honor, we don't believe that there's any
17 asserted basis for liability against LBHI. Each of the
18 severance and employee-related claims that have been allowed
19 against the LBI estate relate to liability against LBI.
20 They cannot recover for the same injury against LBHI and LBI
21 without a legal basis for doing so, and that's Judge Peck's
22 ruling earlier in the case with respect to another employee
23 matter.

24 And, Your Honor, the documents that are attached
25 to the claim are severance agreements or separation letters

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1 with LBI, not LBHI, and in some cases there are pay stubs
2 that are attached that reflect LBI liability.

3 And as I mentioned earlier, Your Honor, the claims
4 have actually now been allowed against LBI, and in light of
5 the most recent notice by the LBI trustee, our understanding
6 is that distribution should be commencing soon from the LBI
7 estate on account of these claims.

8 And so, Your Honor, with that we don't believe
9 that there's any liability against the estate for these
10 claims, and I'll turn it over to the claimants that are
11 here, unless Your Honor has any questions for me.

12 THE COURT: That's fine. All right. Thank you
13 very much.

14 All right. Ms. Bobb, would you like to be heard?
15 Would you like to come up or you can stay there, whichever
16 you're most comfortable with.

17 MS. BOBB: It's very simple, Judge. I came
18 today --

19 THE COURT: Yes, pull the microphone towards you.

20 MS. BOBB: I came today to actually hear the
21 settlement agreement, because I mean from since 2008 to
22 today it has been a back and forth with misunderstanding of
23 two different claim numbers.

24 In -- for the past couple of weeks I have actually
25 reached out to the bankruptcy department in Lehman Brothers

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1 to actually clarify to me which claim I was actually dealing
2 with, because each time I speak to a different attorney --

3 THE COURT: Okay.

4 MS. BOBB: -- I get a different claim number with
5 a different story.

6 I was able to settle that matter today and have a
7 discussion with the attorneys --

8 THE COURT: Okay.

9 MS. BOBB: -- and I have agreed with what the
10 figure that they have shown me, I have agreed to that,
11 because --

12 THE COURT: Okay. Do you have -- do you -- can
13 you tell me who it was that you spoke to?

14 MS. BOBB: Ms. -- I forgot her name.

15 THE COURT: Is she here today?

16 MR. SINGH: Your Honor, that's Ms. Alda (ph) of
17 Lehman Brothers Holdings Inc. general counsel's office.

18 THE COURT: All right. So the --

19 MR. SINGH: Although if I could have a minute to
20 consult --

21 THE COURT: Yes. Let's just get --

22 MR. SINGH: -- I think there may be a little bit
23 of confusion.

24 THE COURT: -- let's get this clarified beyond
25 question for Ms. Bobb.

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1 MR. SINGH: Yes.

2 THE COURT: All right?

3 (Pause)

4 MR. SINGH: Yeah. Your Honor, we did make a
5 settlement proposal to Ms. Bobb with respect to the LBHI
6 claim, but our understanding was that she had rejected, but
7 we're happy to talk to her to clarify anything further.

8 THE COURT: Okay. Let's --

9 MR. SINGH: And I think what she may be referring
10 to, the LBI claim --

11 THE COURT: Yes.

12 MR. SINGH: -- has been allowed, but the --

13 THE COURT: Okay. So --

14 MS. BOBB: So see that's the confusing thing.

15 THE COURT: Okay. So let me try to -- let me try
16 to explain it to you, maybe with the costume it'll make a
17 little -- it'll make a little more sense, right?

18 So there were -- everybody talks about Lehman
19 Brothers as if it's one big thing, but it's actually two
20 really big things and lots of smaller things underneath
21 them. But for our purposes there's LBHI, Lehman Brothers
22 Holdings Inc. --

23 MS. BOBB: Uh-huh.

24 THE COURT: -- and there's Lehman Brothers Inc.
25 You were employed by Lehman Brothers Inc., and you have a

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1 valid claim against Lehman Brothers Inc. Period, full stop.

2 They agree with you that you have a valid claim.

3 In the Lehman Brothers Inc. case, that was the
4 broker dealer, the law requires that first all the customers
5 get paid back their money, and they have been. The law next
6 requires that creditors who are entitled to priority,
7 administrative creditors, other fancy named creditors under
8 the law, they get paid first.

9 But the good news is now in the Lehman Brothers
10 Inc. case regular unsecured creditors such as yourself are
11 going to begin to get distributions. That doesn't mean that
12 the amount of your allowed claim is going to be paid in
13 full, you're going to get distributions with respect to that
14 on a pro rata basis with all the other creditors who are
15 similarly situated to you.

16 That being said, because you have an allowed claim
17 at LBI, Lehman Brothers Inc., and were employed by them, you
18 do not have a claim at Lehman Brothers Holdings Inc.

19 That notwithstanding, if there is some other sort
20 of a settlement discussion that's being had I'm not going
21 stand in the way of that, but that's my view of what the
22 situation is. Does that make sense to you?

23 MS. BOBB: Now it does, before it didn't.

24 THE COURT: So maybe -- maybe it is the robe?

25 MS. BOBB: Because --

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1 MR. SINGH: Thank you, Your Honor.

2 MS. BOBB: -- each time I speak to someone I get a
3 different story and I really was confused.

4 THE COURT: I apologize for that. It's very
5 complicated and you're not alone in being confused by the
6 difference between LBHI and LBI and who owes what to whom,
7 but these folks all are doing a pretty good job, in fact a
8 very good job of making sure that everything is sorted into
9 the right -- into the right bucket.

10 So if you'd like to continue the discussion here
11 that's fine, but based on the record that I have before me
12 today I am going to disallow your claim against Lehman
13 Brothers Holdings Inc., the Lehman entity that was not your
14 employer and that is not responsible. It's two separate
15 pots of money --

16 MS. BOBB: Okay.

17 THE COURT: -- and one is not liable for the
18 other.

19 MS. BOBB: So LBHI --

20 THE COURT: No.

21 MS. BOBB: Okay.

22 THE COURT: LBI, yes.

23 MS. BOBB: That's what I needed to clarify so that
24 I could know exactly where I stand to deal with whoever.

25 THE COURT: Okay.

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1 MS. BOBB: Okay.

2 THE COURT: Very good. Thank you so much for
3 coming in.

4 MS. BOBB: Thank you.

5 THE COURT: Okay. Mr. Shah?

6 MR. SHAH: I'll just say that, you know, from
7 doing just research or a little bit of goggling on LBHI
8 versus LBI --

9 THE COURT: Uh-huh.

10 MR. SHAH: -- I found LBHI was a parent company
11 and LBI was a subsidiary. Correct me if I'm wrong.

12 MR. SINGH: That's correct, Your Honor.

13 THE COURT: That's correct, right.

14 MR. SHAH: Okay.

15 THE COURT: Right.

16 MR. SHAH: So, you know, will LBHI take any
17 responsibilities for the -- for the amount of, you know,
18 settlement of cash that's not going to be (indiscernible -
19 00:23:00)?

20 THE COURT: They won't.

21 MR. SHAH: Like parents should take the
22 responsibility of their kid if they done --

23 THE COURT: Well, I understand as a common sense
24 matter why --

25 MR. SHAH: Okay.

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1 THE COURT: -- you could think that, and lots of
2 folks do think that, and in certain circumstances, although
3 not here, that is possible, but the law is that there can be
4 a very large corporate structure with a parent entity and
5 lots of subsidiaries, and as long as those entities follow
6 corporate formalities and conduct their business separately
7 one is not responsible for the liabilities of the other.
8 And on many occasions in this case, both Judge Peck in the
9 first five years of the case and myself more recently, have
10 confirmed that LBHI is not responsible for the liabilities
11 of LBI.

12 So googling can only get you so far --

13 MR. SHAH: Well, that's why I'm here, you know, I
14 just want to make sure before I sign off on something that,
15 you know, LBI is going take full responsibility for the
16 claims.

17 THE COURT: Right, I understand. And --

18 MR. SHAH: Because there was a little bit of
19 confusion this morning --

20 THE COURT: Right.

21 MR. SHAH: -- with the amounts as well. Right.

22 THE COURT: Right.

23 MR. SHAH: What's priority, what's, you know,
24 unsecured, what's a priority, and the full amount.

25 THE COURT: Well, my understanding is that you

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1 have an allowed claim at LBI.

2 MR. SINGH: That's right, Your Honor. The order
3 reflects that there's an allowed claim against LBI for a
4 general unsecured claim.

5 My understanding is Mr. Shah has also asserted a
6 priority claim against LBI that is either pending or may
7 have been allowed, but the LBI estate, and I'm happy to
8 provide him contact information for the attorneys there --

9 THE COURT: But --

10 MR. SINGH: -- that some of who may be in court,
11 you know, can tell him the status of those claims --

12 THE COURT: Okay. So --

13 MR. SINGH: -- which we're happy to help and
14 facilitate.

15 THE COURT: Okay.

16 MR. SHAH: Okay.

17 THE COURT: So there is no responsibility for
18 LBHI, so your claim --

19 MR. SHAH: Okay. That's fine.

20 THE COURT: -- by LBHI for your claim, so your
21 claim against LBHI is going to be disallowed and expunged.

22 MR. SHAH: That's fine. That's fine. Okay.

23 THE COURT: You have an allowed claim against LBI,
24 it's clear -- unclear as we're sitting here today to what
25 extent it's unsecured, to what extent it's entitled to

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1 priority, but as I said to Ms. Bobb, distributions on
2 account of those claims have begun, so that's -- that's the
3 good news, it's not -- it's not going to be 100 cents on the
4 dollar --

5 MR. SHAH: Yeah.

6 THE COURT: -- but it's going to be a good bit
7 more than zero. So that's about the best we can do. And
8 counsel will give you some contact information for somebody
9 to clarify which bucket your claim falls into at LBI. All
10 right?

11 MR. SHAH: Right, right. Okay.

12 THE COURT: Okay.

13 MR. SHAH: That's fine. Any approximation date
14 wise? Is it going to, you know --

15 THE COURT: They're going to be --

16 MR. SHAH: -- is it going go priority and -- I
17 mean, you know, obviously right --

18 THE COURT: Priority comes first.

19 MR. SHAH: Right.

20 THE COURT: Although to the extent that you have a
21 disputed priority claim that would need to be resolved
22 first, and then there are going to be a series of rolling
23 distributions probably for many years to come as the
24 disputed claims gets resolved and monies become available to
25 pay to the creditors.

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1 MR. SHAH: Okay. So it's going to be little by
2 little. Is that -- is that is way, you know, income --

3 THE COURT: Yeah, that's the way -- that's the way
4 it works, because the estate can't give out -- it has to
5 reserve money for all the disputed claims, so it gives out
6 money that's in the clear on a pro rata basis to everybody
7 who has an allowed claim, and then as the disputes continue
8 to be resolved more money is available, and it's difficult
9 to predict how much, how quickly. I think the only safe
10 prediction is that it's going to take quite a while.

11 So you should -- you should make sure if you move
12 to make sure that the distribution agent has your current
13 address, because it literally could be years. All right?
14 So counsel will give you contact information if you'd like
15 to follow up.

16 MR. SHAH: Okay.

17 THE COURT: But thank you for coming in today.

18 MR. SHAH: Okay. All right.

19 THE COURT: Okay?

20 MR. SHAH: Thank you. And just one last comment,
21 I mean the priority claim amount --

22 THE COURT: Yes.

23 MR. SHAH: -- is that something under review like
24 for future? Because it's a very small amount. I mean it
25 might be okay -- you know, might have been set like years

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1 back and now the wages because of inflation itself is going
2 up, so I'm just wondering like what -- how did somebody come
3 up with that amount? Was it --

4 THE COURT: That's a -- that's not before me
5 today --

6 MR. SHAH: Okay.

7 THE COURT: -- so I don't have the facts --

8 MR. SHAH: Okay.

9 THE COURT: -- but the contact person that you're
10 going to speak to --

11 MR. SHAH: Okay.

12 THE COURT: -- is going to be able to help you in
13 that regard, and to the extent that you don't agree with
14 what they're telling you you have the right to come back in
15 with respect to the allowance of your claim against LBI.

16 MR. SHAH: Okay.

17 THE COURT: All right?

18 MR. SHAH: All right. Thank you.

19 THE COURT: All right, thank you for coming in
20 today.

21 MR. SINGH: Thank you, Your Honor.

22 THE COURT: Okay. So with respect to the claims
23 of Ms. Chan, pursuant to the forty-first omnibus, the claims
24 of Mr. Scott, Mr. Twitchel, and -- Mr. Scott and
25 Mr. Twitchel pursuant to the one hundred and seventeenth

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1 omnibus objection the objections will be sustained and those
2 claims will be expunged and allowed as those are not claims
3 for which LBHI has responsibility.

4 MR. SINGH: Expunged and disallowed, right, Your
5 Honor?

6 THE COURT: Yes.

7 MR. SINGH: I thought you said allowed.

8 THE COURT: Did I say allowed? No, disallowed. I
9 swallowed the dis.

10 MR. SINGH: Your Honor, we will submit orders. We
11 have orders with respect to the first two uncontested motion
12 today for Your Honor, and we will submit the orders on the
13 claim after --

14 THE COURT: Okay.

15 MR. SINGH: -- we were pending your ruling.

16 THE COURT: All right.

17 MR. SINGH: So, Your Honor, I think that takes us
18 now to item number 6 on the agenda.

19 THE COURT: Yes.

20 MR. SINGH: And I will turn it over to -- Weil is
21 not representing the estate on this matter -- I'll turn it
22 over to conflicts counsel, Your Honor.

23 THE COURT: Thank you.

24 MR. SINGH: Thank you very much.

25 THE COURT: Thank you.

1 (Pause)

2 THE COURT: All right. I'm about to hear from the
3 Reilly Pozner firm? Yes?

4 MS. BRASWELL: Actually Jones & Keller.

5 THE COURT: Oh, okay.

6 MS. BRASWELL: And, Your Honor, if it's the Mohr'
7 matter that's in front of you now --

8 THE COURT: Yes.

9 MS. BRASWELL: -- that matter has been adjourned
10 until the next hearing, and notice was provided --

11 THE COURT: I'm sorry, I --

12 MS. BRASWELL: -- to the parties on those.

13 THE COURT: -- let's get on the same page. I
14 thought I was hearing the objection with respect to Arthur
15 and Joan Boor.

16 MS. BRASWELL: Yes, that's right.

17 MR. SINGH: Oh, I'm sorry, did I misspeak earlier?

18 MS. BRASWELL: I thought you said Mohr, but okay,
19 yes.

20 MR. SINGH: It's Mohr and Boor, Your Honor, so
21 there's two separate claims.

22 MS. BRASWELL: Right, there are two separate
23 claims. Mohr is the next hearing and you are hearing the
24 Boor's today.

25 THE COURT: I am hearing the Boor's today.

1 MS. BRASWELL: Yes.

2 THE COURT: Okay.

3 MR. SINGH: Yes.

4 THE COURT: Okay.

5 MR. SINGH: Apologies, Your Honor.

6 THE COURT: Okay. All right. Is anyone here
7 representing the Boors -- the estate of the Boors?

8 MR. BALSAMO: Boors? Yes, Your Honor.

9 THE COURT: Come on up. So this is quite a sad
10 story, quite a sad story, and really eye opening in a way.
11 And let me -- let me just give you what my observations are,
12 because I believe that the relief that is being requested on
13 behalf of the estate of the Boors is rescission.

14 MR. BALSAMO: That's correct.

15 THE COURT: Okay. It's a claim for rescission.
16 So there are a couple of problems with that.

17 First is rescission is we undo the contract,
18 everything gets -- everybody gets put in the place that they
19 were before, you paid me money, I give it back to you,
20 everything goes back to the way it was. So rescission
21 unfortunately literally is not possible here because BCN at
22 the outset was a victim of these impostures, maybe not quite
23 as much as the Boors, but right up there, right?

24 MR. BALSAMO: They were, yes.

25 THE COURT: They were, because BCN put out

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1 \$245,000 and then the money got paid over to Chase. So
2 they're out the money, so no one is going to pay them back
3 the money pursuant to this motion. So rescission just
4 really doesn't work.

5 The second thing that's been brought to our
6 attention is that the paper has since traded. So BCN is no
7 longer the holder of the note and the mortgage and is not
8 enforcing the note and the mortgage, Carrington is -- not
9 BNC, I misspoke, not BCN, BNC, right?

10 So -- so your state court action, right, has to go
11 forward against with respect to Carrington for whatever
12 relief you can get there to save the home, undue this mess,
13 right?

14 MR. BALSAMO: That's correct, Your Honor.

15 THE COURT: Okay. So the debtor says expunge the
16 claim because rescission is not possible, and then you, sir,
17 say, well don't expunge the claim because then that's going
18 to impede your ability to proceed against Carrington.

19 MR. BALSAMO: That's our concern, Your Honor.

20 THE COURT: Okay.

21 MR. BALSAMO: So, if I may --

22 THE COURT: So -- yeah. So it seems to me that we
23 don't -- we don't -- you're not asking for money from the
24 estate.

25 MR. BALSAMO: That's correct.

1 THE COURT: Okay. And I'm not sure if you're --
2 I'm not sure if you're right or wrong with respect to the
3 expungement of the claim.

4 For example, I know in other contexts that when
5 relief from the automatic stay is requested to go after
6 insurance proceeds from time to time I'm told I can't
7 expunge the claim because then the insurance carrier won't
8 defend.

9 So if what's needed here is there simply to be
10 what I would call a place holder claim in order to support
11 the relief that you're seeking against Carrington, I guess
12 my question for the debtor is, why can't we just do that?
13 In other words, what's the urgency other than the desire to
14 clean up the claims register in depriving -- in possibly
15 depriving the estate of the Boors their ability to go after
16 -- to get this undone, vis-à-vis, Carrington, and to
17 continue -- for everybody to continue to sue to find -- to
18 pursue these imposters? I mean if this were maybe ten years
19 from now and this were the last claim on the claims register
20 I might look at it differently, but I think -- I think we
21 have a ways to go.

22 MS. BRASWELL: Right. And the to be clear, Your
23 Honor, you know the plan administrator's position is not
24 that we would want to impede the estate's --

25 THE COURT: Right.

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1 MS. BRASWELL: -- claim as against Carrington, we
2 just want to clear this claim off our books when there's no
3 basis for liability as against BNC.

4 And if it is helpful I can hand up Your Honor a
5 recent order -- and it's not too recent, it's 2013, Judge
6 Glenn entered an order under similar circumstances expunging
7 and disallowing a claim for rescission when there was no
8 basis for it and stating in the order that there was a basis
9 as against the current noteholder --

10 THE COURT: Right.

11 MS. BRASWELL: -- but not as against the debtor.

12 THE COURT: Well, we're -- I agree. I mean, I
13 agree with that that there is no claim for negligent
14 enabling of an imposter or -- there is no claim, but we just
15 have this little procedural thing going on here where I
16 can't really find a good reason at this point to expunge a
17 claim when I'm being told by an aggrieved party that it may
18 impair their ability to be made whole.

19 MS. BRASWELL: Well, would Your Honor consider --
20 and I'm not sure if this resolves the issue that Your Honor
21 is thinking of- but would Your Honor consider lifting the
22 stay in the state court action, giving Mr. Balsamo say 30
23 days to bring in the appropriate parties, and then at that
24 point expunging the claim as against BNC?

25 THE COURT: Would -- does that work for you?

1 MR. BALSAMO: The appropriate -- from what I
2 understand, Judge, when the loan was sold --

3 THE COURT: Right.

4 MR. BALSAMO: -- all right, the new owner of the
5 loan would move right into the state court action, because
6 there are orders in the state court action --

7 THE COURT: Right.

8 MR. BALSAMO: -- there's an equitable lien that's
9 already in favor of the new loan holder.

10 THE COURT: Right.

11 MR. BALSAMO: So basically what would satisfy me
12 is simply an order of the Court saying that the rescission
13 claim may be -- you may want to expunge it against Lehman,
14 but it's without prejudice to pursuing it in the state
15 court.

16 As long as we have language that says that it's
17 without prejudice I don't have the concern of having a
18 bankruptcy defense thrown up at me in the state court and we
19 can go forward.

20 MS. BRASWELL: That's fine, Your Honor, although I
21 would want to be sure that the without prejudice language
22 would only apply as against the new noteholder --

23 THE COURT: Yes.

24 MS. BRASWELL: -- but that BNC is not --

25 THE COURT: Yes.

1 MS. BRASWELL: -- having to seek --

2 MR. BALSAMO: Right.

3 MS. BRASWELL: -- additional dismissal --

4 THE COURT: Absolutely.

5 MS. BRASWELL: -- in the state court action.

6 MR. BALSAMO: Right. Sure, that would work.

7 THE COURT: Okay. Well that I would put in the
8 category of chicken soup. So it truly is chicken soup, it's
9 not something that in any way can harm these estates, and to
10 the extent that it helps you that's fine.

11 So why don't you work together to draft
12 appropriate language and then everybody can be happy, or at
13 least not unhappy.

14 MS. BRASWELL: And if I may, I think part of the
15 issue, we had been working together towards a stipulation
16 that would withdraw -- you know, that would withdraw the
17 proof of claim pending before Your Honor, I think part of
18 the issue is that Mr. Balsamo was having a hard time -- and
19 please correct me if I'm wrong -- but I think you were
20 having a hard time connecting with the Boor's daughter, who
21 I think is now responsible for the estate's matters.

22 MR. BALSAMO: She's been appointed a temporary
23 administrator a number of years ago.

24 THE COURT: Okay.

25 MR. BALSAMO: I did speak with her in October, she

1 said yes, you can withdraw all the claims except for the
2 rescission, we just want to get the mortgage voided. And
3 communication is tough, it's just the nature of the beast.
4 But I believe that I'm acting in the interest of the estate,
5 because she's already told me specifically it's the mortgage
6 that's the issue, we can take out the mortgage, we just want
7 that rescinded, we're not arguing about the equitability
8 (indiscernible - 00:37:27). So I think we can work that
9 out.

10 THE COURT: Have these -- just by way of curiosity
11 have these individuals been located, who perpetrated this?

12 MR. BALSAMO: Yes. In fact --

13 THE COURT: Have they been charged?

14 MR. BALSAMO: -- there's been a default judgment
15 obtained by BNC against two of the three parties.

16 THE COURT: Yes, I understand, but have they been
17 charged criminally?

18 MR. BALSAMO: That I don't know.

19 MS. BRASWELL: I'm not sure if there was a
20 criminal action pending. As far as I know it was just a
21 civil action. I don't think there was a criminal case.

22 MR. BALSAMO: Right, that's my understanding, but
23 I came in very late so I don't -- you know.

24 THE COURT: Okay.

25 All right. Well, subject to be able to be in

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1 touch with Ms. Boor, it sounds like based on this record we
2 have a resolution of the pending matter, and if for some
3 reason that doesn't come together just reach out to chambers
4 and we are available to assist.

5 MR. BALSAMO: That's fine, Judge.

6 THE COURT: All right?

7 MR. BALSAMO: We'll talk when we get back home.

8 MS. BRASWELL: Sounds good.

9 THE COURT: Okay.

10 MR. BALSAMO: Thank you, Judge.

11 MS. BRASWELL: Thank you.

12 THE COURT: All right. Thank you very much.

13 MR. BALSAMO: Bye bye now.

14 MS. MARCUS: Your Honor, that includes the LBHI
15 portion of the agenda.

16 THE COURT: Okay. Thank you, Ms. Marcus.

17 MS. MARCUS: There are some LBI matters on.

18 THE COURT: Yes.

19 MS. MARCUS: May we be excused?

20 THE COURT: Yes, please, thank you.

21 MS. MARCUS: Thank you.

22 (Pause)

23 THE COURT: I'm ready when you are. I'm sorry.

24 MS. GRAGG: Good morning, Your Honor.

25 THE COURT: Good morning.

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1 MS. GRAGG: Meaghan Gragg of Hughes Hubbard &
2 Reed, counsel for Mr. Giddens, the SIPA Trustee.

3 We have three contested matters before the Court
4 today, which will be handled together by my colleague,
5 Stuart Mitchell.

6 We also wanted to inform the Court that we're
7 delighted to begin making distributions to unsecured
8 creditors in accordance with the Court's order, and in fact
9 tomorrow alone 2.6 billion will be distributed to unsecured
10 creditors with distributions continuing on a rolling basis.

11 THE COURT: Terrific. Thank you.

12 Good morning.

13 MR. MITCHELL: Good morning, Your Honor. Stuart
14 Mitchell of Hughes Hubbard & Reed on behalf of the LBI
15 Trustee.

16 As Ms. Gragg mentioned we have three omnibus
17 objections that we believe we can handle all at once based
18 on the responses received by the -- by the claimants. I'm
19 not aware of whether or not the claimants are here or
20 appearing on the phone. I didn't know if you wanted to
21 check that before we proceed, but happy to --

22 THE COURT: Let's see. I'm just looking to see
23 who's on the phone. If you would give me a moment.

24 (Pause)

25 THE COURT: Okay. I don't see anyone on the phone

1 register.

2 MR. MITCHELL: Understood. Well, I'm happy to
3 proceed with the summary of the trustee's position.

4 THE COURT: Okay. Please go ahead.

5 MR. MITCHELL: Excellent.

6 So the three objections before the Court today are
7 the trustee's sixty-first omnibus objection to third-party
8 401(k) accounts -- or claims based on third-party 401(k)
9 accounts, the one hundred and thirty-fifth omnibus objection
10 to claims based on LBI brokerage accounts that held no
11 securities or cash as of the filing date, and the two
12 hundred and seventeenth omnibus objection to claims based on
13 the ownership of structured securities issued by LBHI and
14 LBI, known as pairs.

15 THE COURT: Right.

16 MR. MITCHELL: By these three objections the
17 trustee addressed 66 claims. The trustee did not receive
18 any responses with respect to 62. Those 62 claims have been
19 expunged. The remaining four are before the Court today. A
20 claim filed by Mr. Kahn (ph), a claim filed by Ms. Brodsky
21 (ph), and two claims filed by Mr. and Mrs. McCulla (ph),
22 those are the claims for the pairs.

23 THE COURT: Right.

24 MR. MITCHELL: So two of the responses that we
25 received, even though these omnibus objections were for the

1 401(k) accounts and the LBI brokerage accounts, in the
2 responses and in conversations with the claimants they
3 stress that they're -- what they're seeking is a recovery
4 for LBHI common stock.

5 THE COURT: Right.

6 MR. MITCHELL: So as a result three of the claims
7 before the Court are for securities issued by LBHI, and the
8 fourth, the one claim by the McCullas, is for the structured
9 securities issued by LBI.

10 THE COURT: Okay. So let's -- let's slow down a
11 bit and let me ask is anyone -- is Zamir Kahn (ph) present
12 or anyone representing Zamir Kahn? All right. How about
13 Louise Brodsky or anyone representing Louise Browksi? And
14 anyone here on behalf of John and Ann McCulla?

15 Okay. Let the record reflect it's 10:50, no
16 response. Okay.

17 So with respect to the Zamir Kahn claim and the
18 Louise Brodsky, you're quite right, these appear to be
19 claims related to LBHI security -- well, let me take them
20 one at a time because they are different.

21 Zamir Kahn, yes, these were LBHI securities that
22 were in an LBI held 401(k) account, there's no liability of
23 LBI for the decline in the value of LBHI's securities.
24 So --

25 MR. MITCHELL: Yes, Your Honor. I just -- just to

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1 clarify, it was not an LBI 401(k), it was a third party.

2 THE COURT: Third-party 401(k), yes.

3 MR. MITCHELL: Thank you.

4 THE COURT: So accordingly, moreover, to the
5 extent that there appears to be some notion that there
6 should be veil piercing or there should be some liability
7 across LBHI LBI lines, as I've previously said, that's not
8 the law of the case and cannot be allowed.

9 So accordingly claim number 774 of Zamir Kahn will
10 be disallowed and expunged.

11 All right. So next with respect to the Louise
12 Brodsky claim. That in fact shows a zero balance on LBI's
13 books, correct?

14 MR. MITCHELL: Yes. for the account that her
15 general creditor claim was filed it was duplicative of, yes,
16 that was the case.

17 THE COURT: Yes.

18 MR. MITCHELL: In her response she submitted a
19 broker statement for -- again, a third party account
20 holding --

21 THE COURT: Right.

22 MR. MITCHELL: -- LBHI common, so.

23 THE COURT: Right. So I understand that there
24 were some correspondence and a statement for Ms. Brodsky
25 from SG Cowan (ph) Securities dating to a period back in

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1 1998, and it reflects ownership of 100 shares of LBHI stock.
2 Again, not an appropriate valid basis for a claim against
3 LBI.

4 So claim number 3312 of Ms. Brodski will be
5 disallowed and expunged.

6 MR. MITCHELL: Thank you, Your Honor.

7 THE COURT: Okay?

8 All right. With respect to the McCullas pairs
9 claim, one of these securities was issued by LBHI, correct?

10 MR. MITCHELL: Yes.

11 THE COURT: So that one will be disallowed as
12 against LBI. There's no liability for that claim.

13 I had a question though, and unfortunately they're
14 not here, which makes it a little difficult, but I had a
15 question with respect to the LBI pairs certificate, and
16 maybe you can answer it.

17 This brokerage statement that they give for the
18 period of time in which the filing occurred, for the pairs,
19 the LBI pairs -- and I'm looking at page 10 of 15, which is
20 filed as page 5 of 11 at docket 8623 -- indicates a market
21 value of \$5,450.

22 MR. MITCHELL: I see that, Your Honor.

23 THE COURT: You see that?

24 So I guess my question is, and I understand that
25 under the terms of the security there had to be a comparison

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1 between the value on two different dates, and if the
2 maturity date value was higher or lower, I can't remember
3 which, there would be no recovery. But what I'm struggling
4 with is what the market value means on this date and how
5 that all fits in together with their claim.

6 MR. MITCHELL: Understood, Your Honor. I'm happy
7 to address, Your Honor --

8 THE COURT: Okay.

9 MR. MITCHELL: -- and, you know, go forward with
10 that.

11 You're correct, the value of the pairs is
12 determined solely by the performance of the S&P on two
13 specific dates --

14 THE COURT: Right.

15 MR. MITCHELL: -- and with respect to LBI the
16 performance of the S&P had to be lower in order for the
17 holder to have a recovery.

18 Now with respect to the market value the reporting
19 of that --

20 THE COURT: So what's the -- so given that the
21 filing occurred did that have an effect on the maturity
22 date?

23 MR. MITCHELL: Yes. Yes.

24 THE COURT: So it accelerated the maturity date to
25 the filing date?

1 MR. MITCHELL: Yes, in accordance with the
2 Bankruptcy Code, yeah.

3 THE COURT: But --

4 MR. MITCHELL: And that was made known to the
5 potential purchasers that that could happen.

6 THE COURT: Okay.

7 MR. MITCHELL: Called a bankruptcy event to
8 default that it would shift everything back.

9 THE COURT: Okay.

10 MR. MITCHELL: With respect to the market value, I
11 mean the --

12 THE COURT: So that's the -- so that's the first
13 answer --

14 MR. MITCHELL: Yes.

15 THE COURT: -- is that the maturity date was the
16 -- becomes the filing date and therefore the -- because the
17 value was not higher?

18 MR. MITCHELL: Yes -- yeah -- no, no, the other
19 way around, because --

20 THE COURT: Because the value -- because the value
21 was not lower --

22 MR. MITCHELL: Right.

23 THE COURT: -- there's no return on the security.

24 MR. MITCHELL: Right. Exactly.

25 THE COURT: Okay.

1 MR. MITCHELL: And that's in accordance with the
2 way the maturity and maturity evaluation dates is all set in
3 the offering terms, so --

4 THE COURT: Okay. So that was a first set of
5 questions confirming that the maturity date became the
6 filing date of LBI.

7 MR. MITCHELL: LBI, September 19th, yes, it was
8 pegged to that.

9 THE COURT: Okay. Of LBI.

10 MR. MITCHELL: Yes.

11 THE COURT: So not triggered by the filing of
12 LBHI.

13 MR. MITCHELL: Yeah, they were separate. These
14 securities really were --

15 THE COURT: Right, but they weren't -- they
16 weren't cross defaulted or --

17 MR. MITCHELL: Exactly.

18 THE COURT: Okay. So the market value -- so the
19 market -- so explain the market value point to me.

20 MR. MITCHELL: The only -- the only way I can
21 explain the market value is that, you know, this is
22 something that maybe some temperature taking of what's out
23 there. The holders of the pairs were not ironclad
24 restricted, I mean they weren't told you are forbidden to
25 sell these things, but there were some pretty severe

1 restrictions. They could go out and sell on the open
2 market, though they were cautioned in the offering materials
3 that to do so could result in losses and it's all going to
4 be keyed to, you know, what somebody is going to pay for it.
5 This doesn't create any obligation, in fact the materials
6 are very clear that the only obligation with respect to
7 payout is at maturity and that only on the conditions based
8 on the performance of the S&P.

9 So, you know, the reporting of this market value
10 doesn't generate -- I think to the point doesn't generate an
11 obligation on the part of LBI with respect to these
12 securities. It's tied solely -- again, it's very clear,
13 there's no interest payments, there's no other payments
14 coming from LBI except on maturity.

15 THE COURT: So the market value here is just kind
16 of a guess as to what these folks might have gotten for the
17 securities had they gone out into the secondary market as of
18 some date in September.

19 MR. MITCHELL: If they would have. If they would
20 have, yeah. And of course it's everybody kind of guessing
21 as to based on how the performance of the S&P, what it's
22 going to look like, and at that point it would have been I
23 guess a little over a year and a half to the -- to the
24 stated maturity date on the -- in the documents. September
25 2010 I think.

1 THE COURT: I just noticed that --

2 MR. MITCHELL: July of 2010? Yeah. So it
3 wouldn't be a year and a half, it would be shorter.

4 THE COURT: Has anybody tried to explain all this
5 to the McCullas?

6 MR. MITCHELL: I have, Your Honor. I've spoken
7 with the McCullas on a couple different occasions and walked
8 them through the process.

9 THE COURT: So they were aware that there was a
10 hearing today?

11 MR. MITCHELL: They were aware, yes. Again, like
12 said, I've spoken with them on a couple of occasions.

13 THE COURT: Well, based on your explanation today
14 it does not appear that LBI would be liable for the market
15 value that's reflected on the statements or any market value
16 that would be determined, and based on your explanation of
17 how the maturity worked on this instrument it doesn't appear
18 that the McCullas are entitled to any pay out by LBI with
19 respect to the security.

20 So therefore the claim will be disallowed and
21 expunged.

22 MR. MITCHELL: Thank you, Your Honor.

23 THE COURT: All right?

24 MR. MITCHELL: We have orders that we'll hand to
25 your clerk after this --

1 THE COURT: Very good.

2 MR. MITCHELL: -- in accordance with those
3 decisions.

4 THE COURT: Okay. Thank you so much.

5 MR. MITCHELL: Thank you very much.

6 Anyone else here to be heard on a Lehman Brothers
7 matter? Thank you.

8 (Whereupon these proceedings were concluded at 10:59
9 AM)

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1 C E R T I F I C A T I O N

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3 I, Dawn South, certify that the foregoing transcript is a
4 true and accurate record of the proceedings.

5

6 **Dawn South**


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